
In Re:

Case No. 04-51061

Linda Lou Mayo

Debtor(s)

Chapter 7 Case

NOTICE OF HEARING AND MOTION FOR RELIEF FROM THE STAY

TO: Debtor(s) and other entities specified in Local Rule 9013-3.

1. Ford Motor Credit Company moves the Court for the relief requested below and gives notice of hearing.
2. The Court will hold a hearing on this motion on November 3, 2004 at 1:30 PM o'clock, in Courtroom No. 2, at the United States Courthouse, 515 West First St, Duluth, MN.
3. Any response to this motion must be filed and delivered not later than October 29, 2004, which is three days before the time set for the hearing (excluding Saturdays, Sundays, and holidays), or filed and served by mail not later than October 25, 2004, which is seven days before the time set for the hearing (excluding Saturdays, Sundays and holidays). **UNLESS A RESPONSE OPPOSING THE MOTION IS TIMELY FILED, THE COURT MAY GRANT THE MOTION WITHOUT A HEARING.**
4. This Court has jurisdiction over this motion pursuant to 28 U.S.C. §§157 and 1334, Fed. R. Bankr. P. 5005 and Local Rule 1070-1. This proceeding is a core proceeding. The petition commencing this case was filed September 20, 2004. The case is now pending in this court.
5. This motion arises under 11 U.S.C. §362(d) and Fed. R. Bankr. P. 4001. This motion is filed under Fed. R. Bankr. P. 9014 and Local Rules 9006-1, 9013-1 through 9013-3, and 9017-1. Movant seeks relief from the automatic stay in §362(a) to foreclose its lien against the 2000 MERCURY COUGAR V6 COUPE 2D VEHICLE (the collateral), and requests the court permit Movant to immediately enforce the order requested, lifting the 10 day stay imposed by Rule

4001(a)(3).

6. Movant requests relief from the stay for cause under §362(d)(1). Debtor is delinquent under the terms of the original contract with Movant. Movant requests relief under §362(d)(2). The Debtor has no equity in the collateral, and the collateral is not necessary to an effective reorganization.
7. Movant gives notice that it may, if necessary, call Chester Marzec, or some other representative of Movant, from Movant's offices in Minnesota, to testify regarding the debt and collateral value.
8. This notice of motion and motion also serve as notice of default required by Cobb v. Midwest Recovery Bureau Co., 295 N.W.2d 232 (Minn.1980). If the default is not cured before the hearing, Movant will repossess the collateral promptly upon the Court signing the Order.
9. A separate Memorandum of Fact and Law is attached hereto and made a part hereof.

WHEREFORE, Ford Motor Credit Company moves the Court for an order modifying the automatic stay of §362(a) of the Bankruptcy Code to permit Movant to take possession and dispose of the collateral, and such other relief as may be just and equitable.

Dated: October 1, 2004

STEWART, ZLIMEN & JUNGERS, LTD.

/e/ Linda Jeanne Jungers

Linda Jeanne Jungers, Atty ID #5303X

Attorneys for Movant

430 Oak Grove Street #200

Minneapolis, MN 55403

612-870-4100

This is a communication from a debt collector attempting to collect a debt. Any information obtained will be used for that purpose.

CONFIRMATION OF SECURITY INTEREST (LIEN) PI
DEBTOR NAME AND ADDRESS This lien has been recorded

57

MAYO LINDA L
PO BOX 450
DEER RIVER MN 56636

County of
Debtor Residence

SAUK

Year	Make	Body Style	Vehicle Identification Number	Secured Party No.	Date of Issue
2000	MERC	2DR	1ZWFT61L4Y5610391	002823	04/26/03

SECURED PARTY NAME AND ADDRESS

FORD MOTOR CREDIT COMPANY
PO BOX 105704
ATLANTA GA 30348-5704



Lending Agency: Retain this document until the lien has been satisfied. See reverse side of this form for removing this lien.
Valid lien release only if signed on reverse side.

EXHIBIT A

Buyer (and Co-Buyer) Name and Address (Including County and Zip Code)
LINDA L MAYOPO BOX 454
DEER RIVER, () MN. 56636

CREDITOR (Seller Name and Address)

GLACIER VALLEY FORD-MERCURY, INC.
615 SOUTH BOULAVARD
BARABOO, WI. 53913

You, the Buyer (and Co-Buyer, if any), may buy the property described below, or if the following section is completed, the Repairs or Accessories described below, for cash or on credit. The cash price is shown below as "Cash Price." The credit price is shown below as "Total Sale Price." By signing this contract, you choose to buy on credit under the agreements on the front and back of this contract.

Complete only if contract covers repairs or accessories and not the sale of the Property:			Use For Which Purchased <input type="checkbox"/> Personal <input type="checkbox"/> Agricultural <input type="checkbox"/> Commercial <input type="checkbox"/>
Order Number	Description	Cash Price	
N/A	N/A	N/A	

TRADE-IN:		Year and Make		Gross Allowance		Amount Owning	
New/Used	Year and Make	Model	GVW if Truck (lbs)	Property Identification Number	Use For Which Purchased	Personal	Agricultural
USED	2000	MERCURY	COUGAR	12ME761L4Y5610391	<input checked="" type="checkbox"/> Personal <input type="checkbox"/> Agricultural <input type="checkbox"/> Commercial		

ITEMIZATION OF AMOUNT FINANCED	
1. Cash Price	\$ 12,995.00 (1)
2. Down Payment	N/A
Third Party Rebate Assigned To Creditor	\$ 500.00
Cash Down Payment	\$ N/A
Deferred Down Payment	\$ N/A
Trade-In (description above)	\$ 500.00 (2)
Total Down Payment	\$ 12,495.00 (3)
3. Unpaid Balance of Cash Price (1 minus 2)	\$ 12,495.00 (3)
4. Amounts paid on your behalf (Seller may be retaining a portion of these amounts) To Public Officials	
(i) for license, title & registration fees \$ 70.00	
(ii) for filing fees \$ 21.30	
(iii) for taxes (not in Cash Price) \$ 769.72	\$ 861.22
To Insurance Companies for:	
Credit Life Insurance	\$ N/A
Credit Disability Insurance	\$ N/A
To JPS Administrator for	\$ 460.00
To N/A for	\$ N/A
To N/A for	\$ N/A
To N/A for	\$ N/A
Total	\$ 1,321.22 (4)
5. Amount Financed (3 plus 4)	\$ 14,816.22 (5)

FEDERAL TRUTH-IN-LENDING DISCLOSURES				
ANNUAL PERCENTAGE RATE	FINANCE CHARGE	Amount Financed	Total of Payments	Total Sale Price
The cost of your credit as a yearly rate	The dollar amount the credit will cost you	The amount of credit provided to you or on your behalf	The amount you will have paid when you have made all scheduled payments	The total cost of your purchase on credit, including your downpayment
10.990 %	\$ 4,507.98	\$ 14,816.22	\$ 19,324.20	\$ 19,824.20

Payment Schedule --	Number of payments	Amount of Each payment	When Payments are due
Your payment schedule will be:	59	\$ 322.07	5/11/2003
	1 final	\$ 322.07	5/11/2008

Prepayment: If you pay off your debt early, you will not have to pay a penalty.
Late Payment: You must pay a late charge on the portion of each payment received more than 10 days late. The charge is 5 percent of the late amount or \$10.00, whichever is less.
Security Interest: You are giving a security interest in the property described above.
Contract: Please see this contract for additional information on security interest, nonpayment, default, the right to require repayment of your debt in full before the scheduled date, and prepayment penalty.

COMMERCIAL USE CONTRACTS: If you purchased the vehicle for commercial use, you must pay a late charge on the portion of each payment received more than 10 days late of 5 percent of the late amount or \$50.00, whichever is less.

Any change in this contract must be in writing and signed by you and the Creditor.

Buyer Signs *Linda Mayo* Co-Buyer Signs *Linda Mayo*

YOU ACKNOWLEDGE THAT YOU HAVE READ AND AGREE TO BE BOUND BY THE ARBITRATION PROVISION ON THE REVERSE SIDE OF THIS CONTRACT.

NOTICE TO CUSTOMER
(a) Do not sign this before you read the writing on the reverse side, even if otherwise advised. (b) Do not sign this if it contains any blank spaces. (c) You are entitled to an exact copy of any agreement you sign. (d) You have the right at any time to pay in advance the unpaid balance due under this agreement and you may be entitled to a partial refund of the finance charge.

Buyer (and Co-Buyer) acknowledge that (i) before signing this contract, Buyer (and Co-Buyer) received and reviewed a true and completely filled in copy of this contract and (ii) at the time of signing this contract, Buyer (and Co-Buyer) received a true and completely filled in copy of this contract.

Buyer Signs *Linda Mayo* Co-Buyer Signs *Linda Mayo*

By signing below, the Seller accepts this contract. If no other Assignee is named in a separate assignment attached to this contract the Seller assigns it to Ford Motor Credit Company.

Seller *Glacier Valley Ford-Mercury, Inc.*

FC 17648-SI Jan 03 Previous editions may NOT be used. SEE BACK FOR ADDITIONAL AGREEMENTS

YOU MAY OBTAIN PROPERTY INSURANCE FROM A PERSON OF YOUR CHOICE.

LIABILITY INSURANCE COVERAGE FOR BODILY INJURY AND PROPERTY DAMAGE CAUSED TO OTHERS IS NOT INCLUDED.

CREDIT LIFE, CREDIT DISABILITY AND OTHER OPTIONAL INSURANCE ARE NOT REQUIRED TO OBTAIN CREDIT AND WILL NOT BE PROVIDED UNLESS YOU SIGN AND AGREE TO PAY THE PREMIUM.

You have the right to cancel Credit Life and/or Credit Disability Insurance within 10 days from the date of this contract and receive credit for the full premium shown.

<input type="checkbox"/> Credit Life N/A	Insurer
\$ N/A	Premium
Insured(s)	
Signature(s)	

<input type="checkbox"/> Credit	N/A	Insurer
<input type="checkbox"/> Disability	N/A	Insurer
\$ N/A	Premium	Insured
Signature		

<input type="checkbox"/> N/A	N/A	Insurer
<input type="checkbox"/> Other Optional Insurance	Term	Premium
N/A	Insurer	\$ N/A
Signature		

Credit Life and Credit Disability Insurance are for the term of the contract. The amount and coverages are shown in a notice or agreement given to you today.

You are required to insure the vehicle. If a charge is shown below, the Creditor will try to buy the coverages checked for the term shown. Coverages will be based on the cash value of the vehicle at time of loss, but not more than the limits of the policy.

Property Insurance: You are required to insure the property if the amount financed and the value of the property is \$500 or more.

<input type="checkbox"/> Comprehensive	<input type="checkbox"/> \$ 0.00	Deductible
Collision		

<input type="checkbox"/> Fire-Theft-Combined Additional Coverage	
<input type="checkbox"/> Towing and Labor	
<input type="checkbox"/> Term	N/A Months (Estimate)
<input type="checkbox"/> Premium	\$ N/A

☒ Debt Cancellation Waiver (Optional) - If the box is checked you have purchased a debt cancellation waiver. Purchase of this coverage is optional and is not required to obtain credit. The terms and conditions of the debt cancellation waiver are set forth in the attached Addendum which is incorporated into this contract.

\$ 460.00	60
Cost	Term
Signature <i>Linda Mayo</i>	

Program No. _____



PLEASE CALL US AT 1-800-727-7000

Visit us at www.fordcredit.com

03-001

EXHIBIT B

ORIGINAL

04-03966-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:
Linda Lou Mayo

Debtor(s)

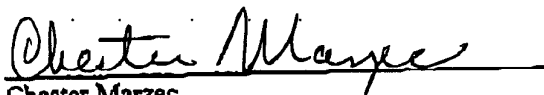
Case No. 04-51061
Chapter 7 Case

VERIFICATION FOR MOTION FOR RELIEF FROM STAY

I, Chester Marzec, the Designated Agent for Ford Motor Credit Company, the Creditor herein, declare under penalty of perjury that the following is true and correct according to the best of my knowledge, information and belief, and based on the Creditor's business records:

1. I am legally competent to testify and am personally familiar with the debt owed by Debtor to the Creditor on account number(s) 34389440.
2. The Debtor owes the Creditor \$12,136.01, payoff amount as of September 20, 2004, plus accrued unpaid interest thereon since that date. The monthly loan payment is \$322.07. As of September 20, 2004, the loan payments are in arrears \$644.14 for payments owing since August 11, 2004.
3. The debt owed to the Creditor is secured by a perfected lien on a 2000 MERCURY COUGAR V6 COUPE 2D VEHICLE. The current value of the collateral is believed to be \$8,675.00.
4. True and correct copies of the title documents are attached to the Motion as Exhibit "A". True and correct copies of the loan documents are attached as Exhibit "B".
5. The Statement of Intentions says Debtor will surrender the vehicle; Debtor has failed to do so.
6. The Contract requires insurance be maintained by buyer to protect Creditor's interest in the collateral. No evidence of insurance has been provided since filing.

Dated: 9-29-04



Chester Marzec
Ford Motor Credit Company
National Bankruptcy Svc Center
PO Box 537950
Livonia, MI 48153-7950

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-51061

Linda Lou Mayo

Debtor(s)

Chapter 7 Case

MEMORANDUM OF FACT AND LAW

Ford Motor Credit Company ("Movant") submits this Memorandum of Fact and Law in support of its motion for relief from the stay.

FACTS

Movant is the holder of a secured claim, and is thus a party in interest. Movant has a valid and perfected security interest in the collateral. The collateral is in the possession of the Debtor.

The total net balance due on the Contract is \$12,136.01 as of September 20, 2004. On information and belief, the collateral has a current NADA retail value of \$8,675.00. A copy of the NADA page(s) showing the value of the collateral is attached as Exhibit "C".

The Statement of Intentions says Debtor will surrender the vehicle; Debtor has failed to do so. Movant's collateral is subject to depreciation in that the collateral is being used, subjecting the same to wear and tear, while Debtor is failing to make payments. There has been a further material default; Debtor has failed to comply with the Contract provision requiring Debtor to supply Movant with evidence of collateral insurance.

ARGUMENT

Pursuant to 11 U.S.C. §362(d)(1), a creditor is entitled to relief from the automatic stay "for cause, including the lack of adequate protection of an interest in property of such creditor." In this case, there is a lack of adequate protection as follows:

- Failure to make the payments required by the Contract since August 11, 2004.
- Failure to make payments due post petition under the Contract.

- Failure to reaffirm, redeem or surrender the collateral.
- Failure to maintain physical damage insurance on the collateral.

Movant has not been provided with adequate protection of Movant's interest in the collateral.

Such circumstances constitute cause, within the meaning of §362(d)(1), justifying relief from the stay.

See, United States Association of Texas v. Timbers of Inwood Association, Ltd. (In re Timbers of Inwood Association, Ltd.), 484 U.S. 365, 108 S.Ct. 626, 98 L.Ed. 2d 740 (1988); In re Reinbold v. Dewey County Bank, 942 F.2d 1304, 1306 (8th Cir. 1991). Pursuant to 11 U.S.C. §362(g), the burden is on the Debtor to prove adequate protection and/or absence of cause.

Pursuant to 11 U.S.C. §362(d)(2), relief from the automatic stay is also appropriate if the Debtor has no equity in the property and the property is not necessary to an effective reorganization. See, In re Gellert, 55 B.R. 970 (Bkrtcy. D.N.H. 1983). In the present case, the balance due Movant on the Contract is \$12,136.01. It appears Debtor has no equity in the collateral. No evidentiary hearing is required on the issue of equity unless Debtors dispute it. Powers v. American Honda Finance Corp., 216 B.R. 95, 97 (N.D.N.Y. 1997). There is no reorganization proposed by the Debtor in this Chapter 7 case. Pursuant to 11 U.S.C. §362(g), the burden is on Debtor to establish that collateral is necessary for reorganization.

Bankruptcy Rule 4001(a)(3) imposes a stay of 10 days which the court may, in its discretion, order is not applicable so that Movant may immediately enforce and implement the order granting relief. Advisory Committee Notes to 1999 Amendments to Bankruptcy Rule 4001.

Dated: October 1, 2004

STEWART, ZLIMEN & JUNGERS, LTD.
/s/ Linda Jeanne Jungers
Linda Jeanne Jungers, Atty ID #5303X
Attorneys for Movant
430 Oak Grove Street #200
Minneapolis, MN 55403
612-870-4100

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-51061

Linda Lou Mayo

Debtor(s)

Chapter 7 Case

UNSWORN CERTIFICATE OF SERVICE

I, Linda Jeanne Jungers, declare under penalty of perjury that on October 4, 2004, I mailed copies of the attached Notice of Hearing and Motion for Relief from the Stay with Exhibits, Verification, Memorandum of Fact and Law, Certificate of Service, and proposed Order, by first class mail postage prepaid to each entity named below at the address stated below for each entity.

Linda Lou Mayo
PO Box 450
Deer River, MN 56636

John F Hedtke
1217 E 1st Street
Duluth, MN 55805

Robert R Kanuit
Chapter 7 Trustee
4815 W Arrowhead Rd, Suite 230
Hermantown, MN 55811

U.S. Trustee
1015 U.S. Courthouse
300 South 4th Street
Minneapolis, MN 55415

Executed on: October 4, 2004

Signed: /e/Linda Jeanne Jungers
Linda Jeanne Jungers
STEWART, ZLIMEN & JUNGERS
430 Oak Grove Street, #200
Minneapolis, MN 55403

04-03966-0

UNITED STATES BANKRUPTCY COURT
DISTRICT OF MINNESOTA

In Re:

Case No. 04-51061

Linda Lou Mayo

Debtor(s)

Chapter 7 Case

ORDER FOR RELIEF FROM THE STAY

Ford Motor Credit Company's Motion for an order granting relief from the stay came before the Court on November 3, 2004 at 1:30 PM o'clock.

Based on the arguments of counsel, all the files, records and proceedings herein, the court being advised in the premises, and the court's findings of fact and conclusions of law, if any, having been stated orally and read in open court following the close of evidence,

IT IS HEREBY ORDERED:

1. The automatic stay is modified to permit Ford Motor Credit Company to repossess and sell the 2000 MERCURY COUGAR V6 COUPE 2D VEHICLE, VIN 1ZWFT61L4Y5610391, in accordance with applicable state law.
2. Notwithstanding Federal Rule of Bankruptcy Procedure 4001(a)(3), this Order is effective immediately.

Dated: _____

United States Bankruptcy Judge